

November 24, 2020

David J. Smith  
Clerk of the Court  
U.S. Court of Appeals for the Eleventh Circuit  
Elbert P. Tuttle Courthouse  
56 Forsyth Street, N.W.  
Atlanta, GA 30303

**Re: *United States v. Winner*, Case No. 20-11692  
Appellant Reality Leigh Winner’s FED. R. APP. P. 28(j) Letter  
Submitting Supplemental Authorities**

Dear Mr. Smith:

Appellant Reality Winner (“Reality”) files this letter under Federal Rule of Appellate Procedure 28(j) to advise the Clerk of two significant opinions that the Sixth and Seventh Circuits issued after this matter’s November 17, 2020 oral argument: (1) *United States v. Jones*, No. 20-3701 (6th Cir. Nov. 20, 2020), and (2) *United States v. Gunn*, No. 20-1959 (7th Cir. Nov. 20, 2020).

Both decisions are pertinent to Reality’s appeal. *Jones* and *Gunn* consider whether a United States District Judge may determine if the circumstances constitute “extraordinary and compelling reasons” for relief on a prisoner-filed motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A).

In *Jones*, the Sixth Circuit considered whether a District Judge may disregard the Sentencing Commission’s policy statement § 1B1.13 and have full discretion to define “extraordinary and compelling” on a prisoner-made compassionate release motion. No. 20-3701, slip op. at 12. The Court held that a Judge can. *Id.* at 16. The Court reasoned that the policy statement’s wording was not intended to be restrictive or exhaustive when written. *Id.* at 15, n. 18. The Court further reasoned that the policy statement predated the First Step Act and was, therefore, outdated. *Id.* at 13. Finally, the Court reasoned Congress did not intend for “extraordinary and compelling reasons” under 18 U.S.C. § 3582(c)(1)(A) to be those only which the Bureau of Prisons has expressly defined. *Id.* at 14.

In *Gunn*, the Seventh Circuit considered whether the Sentencing Commission's failure to issue an updated policy statement precluded a District Judge from granting relief under 18 U.S.C. § 3582(c)(1)(A) on a prisoner-made compassionate release motion. No. 20-1959, slip op. at 4. The Seventh Circuit held it did not. *Id.* The Court held that the Statute itself gave District Judges the power to release prisoners under the "extraordinary and compelling reasons" standard and instructed District Judges to look to the Sentencing Commission policy statements for "consisten[cy]" not "authoriz[ation]" for their rulings. *Id.* The Court further held that any concern over abuse of power or abuse of discretion was absolved because these decisions would be "subject to deferential appellate review." *Id.* at 5.

Sincerely,

/s/Baruch Weiss

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 24, 2020, I served a copy of the foregoing on all interested parties by electronic filing through the Court's CM/ECF system.

/s/Baruch Weiss

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**CERTIFICATE OF COMPLIANCE**

Under Federal Rule of Appellate Procedure 28(j), this letter complies with the word limitation for supplemental letters set forth in Rule 28(j) because the body of the letter has 350 words. *See* F.R.A.P. 28(j) (noting the body of 28(j) letter “must not exceed 350 words”). This motion also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared using Microsoft Word in 14-point Times New Roman, which is a proportionally spaced typeface.

/s/Baruch Weiss

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**Disclosure of Corporate Affiliations and Other Interests**

Counsel for Appellant Reality Leigh Winner states that the following is a full and complete list of all entities and persons having an interest in the outcome of this appeal:

Aaron, David C., U.S. Department of Justice

Barnard, Thomas H., Attorney for Appellant

Bell, Jr., John C., Attorney for Appellant

Chester, Matthew S., Attorney for Appellant

Christine, Bobby, L., United States Attorney

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Durham, James D., Former Assistant United States Attorney

Edelstein, Julie A., U.S. Department of Justice

Epps, Hon. Brian K., United States Magistrate Judge

Grinter, Alison, Attorney for Appellant

Greenwood, Nancy, Assistant United States Attorney

Hall, Hon. J. Randal, United States District Judge

Larson, Amy E., U.S. Department of Justice

Mannino, Katherine C., Former Attorney for Appellant

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Solari, Jennifer G., Assistant United States Attorney

Switzer, Brett A., Attorney for Appellant

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Whitley, Joe D., Attorney for Appellant

Winner, Reality Leigh, Appellant

No publicly traded company or corporation has an interest in the outcome of this case or appeal.

/s/Baruch Weiss

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